IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.R.No.663 of 1999
Date of Decision: .10.2006

Gurcharan Singh.

..... Petitioner.

Versus

Gurnam Singh.

..... Respondent.

CORAM: Hon'ble Mr.Justice Mahesh Grover

....

Present: Shri Sunil Chadha, Advocate for the petitioner.
Shri P.K.Gupta, Advocate with Ms.Priya Gupta, Advocate for the respondent.

....

Mahesh Grover,J.

In the present revision petition preferred by the tenant against order dated 4.1.1999 of the Rent Controller, Jagraon (hereinafter described as `the Rent Controller'), the only question that is to be determined is as to whether the provisions of Section 13-A of the East Punjab Urban Rent Restriction Act,1949 (for short, `the Act') entitled the landlord to seek eviction of the tenant from the premises which are commercial in nature.

The respondent-landlord sought the ejectment of the petitioner-tenant from the premises in question which, admittedly, is a shop let out to latter at the rate of Rs.40/- per month. A rent deed dated 21.7.1971 was

duly executed in this regard which mentions the premises to be a pucca shop bearing No. M.C.1644. The respondent, who retired from government service on 30.9.1996, claimed himself to be a specified landlord and invoked the provisions of Section 13-A of the Act to evict the petitioner.

The petition was resisted by pleading that it was not maintainable under Section 13-A of the Act as the premises in question were commercial in nature.

On the pleadings of the parties, the Rent Controller framed the following issues:-

1. Whether the applicant is a specified landlord of the suit property?OPA
2. Whether the applicant is entitled for ejectment of respondent as prayed for?OPA
3. Whether the present petition is not maintainable?OPR
4. Whether provisions of Section 13-A of Rent Act are not applicable?OPR
5. Whether the petitioner is estopped by his own act and conduct from filing the present petition?OPR
6. Relief.

After examining the evidence led by both the parties and hearing their learned counsels, the Rent Controller accepted the petition and directed the eviction of the petitioner from the premises in question.

Shri Sunil Chadha, learned counsel for the petitioner contended that the premises being commercial in nature, the benefit of Section 13-A of the Act is not available to the respondent. In support of his contention, he relied upon the judgments of this Court reported as 1987(2) P.L.R. 222 –

Lal Chand Versus Bal Kishan ; 1992(2) P.L.R. 693 – Nirmal Singh Versus Kuldip Raj ; 1996(2) R.C.R. (Rent) 611 – Smt. Savinder Kaur Versus M/S Pindi Paints Stores Agency; and 1998(2) R.C.R. (Rent) 233 – Jatinder Dev Nanda Versus Rajinder Singh.

Shri P.K.Gupta, learned counsel for the respondent relied upon the judgment of this Court reported as 1997(1) Rent Control Reporter 437 (P.&H.) - Pritam Singh Versus Satish Chander to contend that if the premises in question is a part of the residential building, then the essential character of the building remains residential and the respondent being the specified landlord qua the premises in question was entitled to invoke the provisions of Section 13-A of the Act.

I have thoughtfully considered the respective contentions and carefully examined the whole record.

Undisputedly, the provisions of Section 13-A of the Act are not attracted in case the premises are commercial in nature. This piece of legislation was intended for the benefit of employees working in Public Undertakings/ Government Establishments to seek eviction of the residential premises in order to obviate a situation of not having a roof on their heads after the retirement when they are deprived of a government accommodation. But, if the premises are commercial in nature, the provisions of Section 13-A of the Act are not available. A perusal of the record of the present case reveals that the demised premises are a shop and described as such in the rent deed. Besides, the petitioner has placed photographs (Annexure P1) on record to establish overwhelmingly the existence of commercial area where the demised premises are situated. The site plan relied upon by the respondent shows the existence of his residential

area at the back of the demised premises with a door in between. However, this will not change the essential character of the demised premises which is commercial. That apart, the Local Body has described the residential property of the respondent by allotting a separate number to it, i.e., No. M.C.1630 which leads to an inevitable conclusion that the demises premises are separate and not a part of one and the same property.

For the foregoing reasons, the revision petition is allowed and order dated 4.1.1999 of the Rent Controller is set aside. The parties are left to bear their own costs.

October ,2006 (Mahesh Grover)
"SCM" Judge